IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

MFA.No. 472 of 2001(B)

OPMV.418/1995 of ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE CO. LTD., KOCHI.

BY ADV. SRI.P.JAYASANKAR

RESPONDENTS/CLAIMANT & RESPONDENTS 1, 2, 4 AND 5:
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1. BHASKARAN, S/O.NARAYANAN,
MAMPURATH HOUSE, PIRAVAM.

2. P.P.MATHAI, PUTHENPURACKAL HOUSE,
PAZHOOR, PIRAVAM.

3. SOMAN, VATTAKKATTIL HOUSE,
NEAR POST OFFICE, KARIKKODU,
VIA-PERUVA, MULAKULAM VILLAGE,
VAIKOM TALUK.

4. RANI BABY, THEKKEDATH HOUSE,
KANAYANNOOR,
CHOTTANIKKARA.

5. THE UNITED INDIA INSURANCE CO. LTD.,
TRIPUNITHURA.

BY ADV. SRI.THOMAS KOSHY (FOR R1)
SRI.RAKESH S.PILLAI (FOR R1)
SRI.V.P.YOHANNAN (FOR R4)
SRI.A.C.CHACKO
SRI.A.A.MOHAMMED NAZIR (FOR R5)
SRI.T.K.KOSHY (FOR R1)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/07/2007, ALONG WITH CO NO. 105 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.4998 OF 2001 IN M.F.A. NO.472 OF 2001

DISMISSED.

Sd/-
J.B.KOSHY, JUDGE

Sd/-
25/7/07. K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

JP

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.472 OF 2001 & C.O.105 of 2004

Dated 25th July, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the insurance company questioning the finding of negligence on the part of the driver of the vehicle insured by it. Admittedly, application under Section 170 of the Motor Vehicles Act for permission to contest the case on merits, apart from the defences under Section 149(2), was not filed by the insurance company. Therefore, we are not looking into the contention regarding the negligence urged by the appellant insurance company as appeal is not maintainable. The above position of law was reiterated by the Supreme Court in ***National Insurance Co. Ltd.*** v. ***Nicolletta Rohtagi and others*** (JT 2002 (7) SC 251). Hence, this appeal is liable to be dismissed as not maintainable.

2. It is submitted by the counsel for the insurance company that the order passed is so perverse so as to interfere under Article 227 of the Constitution of India. It The amount awarded was only Rs.33,000/=. It cannot be stated that the impugned award is so unsustainable and requires interference under Article 227 of the Constitution of India.

3. Claimant filed the cross objection questioning the impugned award. According to him, he was running a `C' class shop and he was getting Rs.3,000/= per month, but, Tribunal has taken only Rs.1,500/= as monthly income. The accident occurred in 1994. No evidence was adduced to prove that he was getting Rs.3,000/= per month. Hence, Rs.1,500/= fixed by the Tribunal requires no interference. He was aged 62 and he was only a petty shop owner and the injury sustained by him was fracture of left knee. If he was running a petty shop, even with the injury he can continue the shop if the treatment period was over. In any event, Tribunal has awarded just and reasonable compensation of Rs.33,000/= with interest. Hence, the cross objection also liable to be dismissed.

Both appeal and cross objection are dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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